**UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

In re:

SUSAN C. DEWEY, Case No.: 8:16-bk-01851-KRM

Debtor. Chapter 7
_________________________________/

ANGELA STATHOPOULOS, as Chapter 7
Trustee of the estate of SUSAN C. DEWEY,

Plaintiff,

v. ADVERSARY
PROCEEDING NO.:____________

NAVIENT SOLUTIONS, LLC, and
PIONEER CREDIT RECOVERY, INC.

Defendants.
____________________________________/

**COMPLAINT FOR UNLAWFUL DEBT COLLECTION PRACTICES**
**AND TELEPHONE CONSUMER PROTECTION ACT VIOLATIONS**

COMES NOW, Plaintiff, Angela Stathopoulos, the Chapter 7 Trustee of the bankruptcy estate of Susan C. Dewey ("Plaintiff"), by and through the undersigned counsel, and sues Defendants Navient Solutions, LLC ("Navient") and Pioneer Credit Recovery, Inc. ("Pioneer"), and alleges as follows:

1. On or about March 3, 2017 ("Petition Date"), Susan C. Dewey ("Debtor") filed a petition under Chapter 13 of Title 11 of the United States Code in this Court. Thereafter, Debtor's bankruptcy was converted to Chapter 7. Debtor's Chapter 7 bankruptcy is currently pending in this Court.

2. Plaintiff brings this adversary proceeding seeking money damages for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA"), the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA") and the Florida Consumer Collection Practices Act, Fla. Stat. § 559, *et seq.* ("FCCPA").

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, as well as the Standing Order of Reference entered by Hon. Anne C. Conway, Middle District of Florida, on February 22, 2012, 12-MISC-26.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a) and Local Rule 1071-1 of the United States Bankruptcy Court for the Middle District of Florida.
5. Plaintiff has standing to bring this action pursuant to 11 U.S.C. § 541(a).

**PARTIES**

6. Plaintiff, Angela Stathopoulos ("Plaintiff" or "Trustee") is the Chapter 7 Trustee of Debtor's bankruptcy estate.
7. Debtor is a natural person and resident of Hillsborough County, Florida. Debtor is a "consumer" as defined by 15 U.S.C. § 1692a(3) and Fla. Stat. § 559.55(8) and a "person" under 47 U.S.C. § 227(b)(1).
8. Defendant Pioneer is a foreign profit corporation doing business in Florida. Pioneer's business involves the collection of thousands of debts from thousands of consumers, including defaulted debts transferred, assigned or placed with Pioneer for collection subsequent to default.
9. Pioneer holds itself out as a business providing debt collection services and identified itself as a "debt collector" when communicating with Plaintiff.

10. Pioneer uses the telephone, internet and/or mails in a business the principal purpose of which is the collection of debts.
11. Pioneer regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.
12. Pioneer holds a Consumer Collection Agency License issued by the Florida Office of Financial Regulation.
13. Pioneer is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6) and Fla. Stat. § 559.55(7) and a "person" as provided in 47 U.S.C. § 227(b)(1) and Fla. Stat. § 559.72.
14. Defendant Navient is a foreign limited liability company doing business in Florida. Navient is a "creditor" as that term is defined by Fla. Stat. § 559.55(5) and a "person" as provided in 47 U.S.C. § 227(b)(1) and Fla. Stat. § 559.72.

**FACTUAL ALLEGATIONS**

15. Debtor is alleged to owe Navient debts listed on Schedule F of Debtor's bankruptcy petition bearing account numbers ending in "0712", "0305", "0815", "1742", "0924" and "0617" (hereinafter collectively referred to as the "Alleged Debt").
16. The Alleged Debt is a "debt" as that term is defined by Fla. Stat. § 559.55(6) as the obligation arose out of student loans.
17. The Meeting of Creditors, pursuant to 11 U.S.C. § 341, was held on November 18, 2016.
18. It was the substantive testimony of the Debtor, sworn and under oath, at the Section 341 Meeting of Creditors, that beginning in or around 2013 through the Petition Date:
    a. Navient placed telephone calls to Debtor in an attempt to collect the Alleged Debt ten to twelve times per day, two to three days per week;

b. Navient placed telephone calls to Debtor in an attempt to collect the Alleged Debt after Debtor told Navient to stop calling;

c. Navient placed telephone calls to Debtor in an attempt to collect the Alleged Debt after Debtor told Navient that Debtor could not pay the Alleged Debt;

d. Navient placed telephone calls to Debtor's cellular telephone in an attempt to collect the Alleged Debt after Debtor told Navient to stop calling.

e. Pioneer placed telephone calls to Debtor in an attempt to collect a portion of the Alleged Debt four to five times per day, two to three days per week;

f. Pioneer placed telephone calls to Debtor in an attempt to collect a portion of the Alleged Debt after Debtor told Pioneer to stop calling;

g. Pioneer placed telephone calls to Debtor in an attempt to collect a portion of the Alleged Debt after Debtor told Pioneer that Debtor could not pay the Alleged Debt;

h. Pioneer placed telephone calls to Debtor's cellular telephone in an attempt to collect the Alleged Debt after Debtor told Pioneer to stop calling.

19. Upon information and belief, prior to Pioneer's conduct as alleged in paragraphs 18(e) through 18(h) *supra*, Navient engaged Pioneer to collect some or all of the Alleged Debt from Debtor. This engagement created a principal-agent relationship between Navient and Pioneer such that Navient controlled or had the right to control Pioneer and Pioneer consented to acting on Navient's behalf.

20. Upon information and belief, the above referenced telephone calls were placed through the use of an artificial or prerecorded voice and/or equipment which has the capacity to dial telephone numbers without human intervention. Such telephone calls fall within the purview of, and are subject to, the TCPA. *See, In the Matter of Rules & Regulations*

*Implementing the Tel. Consumer Prot. Act of 1991*, 30 F.C.C. Red. 7961, 2015 WL 4387780, at *8 (July 15, 2015).

21. Debtor expressly revoked any consent Defendants may have had to place telephone calls to Debtor's cellular telephone in the manner described above by clearly expressing her desire not to receive further telephone calls from Defendants. *See, In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 2015 WL 4387780, at ¶ 63 (F.C.C. July 10, 2015).
22. Defendants placed multiple telephone calls to Debtor's cellular telephone in the manner described above without Debtor's prior express consent.
23. Defendants repeatedly and consistently placed multiple telephone calls to Debtor over an extended period of time in an attempt to collect the Alleged Debt after all reasonable efforts of negotiation and persuasion with respect to resolving the Alleged Debt had failed.
24. All necessary conditions precedent to the filing of this action occurred or have been waived.

**COUNT I – VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii) BY PIONEER**

25. Plaintiff re-asserts and re-alleges paragraphs 1 through 24 as if fully restated herein.
26. Pioneer is subject to, and has violated the provisions of, 47 U.S.C. § 227(b)(1)(A)(iii) by placing non-emergency telephone calls to Debtor's cellular telephone through the use an artificial or prerecorded voice and/or through the use of telephone equipment that falls within the purview of, and is subject to, the TCPA without Debtor's prior express consent.
27. Pioneer's violations of 47 U.S.C. § 227(b)(1)(A)(iii) were knowing or willful, in that at all times material hereto Pioneer knew it was calling Debtor's cellular telephone for non-emergency purposes through the use of an artificial or prerecorded voice and/or telephone

equipment that falls within the purview of, and is subject to, the TCPA without Debtor's prior express consent.

28. As a direct and proximate result of Pioneer's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Debtor has suffered the periodic loss of her cellular telephone service, stress, anxiety and frustration.

29. In light of Pioneer's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff is entitled to statutory or actual damages pursuant to 47 U.S.C. § 227(b)(3).

**COUNT II – VIOLATION OF 15 U.S.C. § 1692d BY PIONEER**

30. Plaintiff re-asserts and re-alleges paragraphs 1 through 24 as if fully restated herein.

31. As more fully detailed above, Pioneer is a debt collector and did attempt to collect a consumer debt from Debtor. As such, Pioneer's actions are subject to the FDCPA.

32. Pioneer repeatedly and consistently placed multiple telephone calls to Debtor over an extended period of time in an attempt to collect the Alleged Debt after all reasonable efforts of negotiation and persuasion with respect to resolving the Alleged Debt had failed.

33. As demonstrated by the pattern, frequency and circumstances surrounding Pioneer's collection efforts directed at Debtor, Pioneer has violated 15 U.S.C. § 1692d by engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of any debt.

34. As a direct and proximate result of Pioneer's violations of 15 U.S.C. § 1692d, Debtor has suffered stress, anxiety and frustration.

35. In light of Pioneer's violation of 15 U.S.C. § 1692d, Plaintiff is entitled to actual damages, statutory damages, attorney's fees and costs pursuant to 15 U.S.C. § 1692k.

## COUNT III – VIOLATION OF 15 U.S.C. § 1692d(5) BY PIONEER

36. Plaintiff re-asserts and re-alleges paragraphs 1 through 24 as if fully restated herein.
37. As more fully detailed above, Pioneer is a debt collector and did attempt to collect a consumer debt from Debtor. As such, Pioneer's actions are subject to the FDCPA.
38. Pioneer repeatedly and consistently placed multiple telephone calls to Debtor over an extended period of time in an attempt to collect the Alleged Debt after all reasonable efforts of negotiation and persuasion with respect to resolving the Alleged Debt had failed.
39. As demonstrated by the pattern, frequency and circumstances surrounding Pioneer's telephonic collection efforts directed at Debtor, Pioneer has violated 15 U.S.C. § 1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
40. As a direct and proximate result of Pioneer's violations of 15 U.S.C. § 1692d(5), Debtor has suffered stress, anxiety and frustration.
41. In light of Pioneer's violation of 15 U.S.C. § 1692d(5), Plaintiff is entitled to actual damages, statutory damages, attorney's fees and costs pursuant to 15 U.S.C. § 1692k.

## COUNT IV – VIOLATION OF SECTION 559.72(7), FLORIDA STATUTES BY PIONEER

42. Plaintiff re-asserts and re-alleges paragraphs 1 through 24 as if fully restated herein.
43. Pioneer repeatedly and consistently placed multiple telephone calls to Debtor over an extended period of time in an attempt to collect the Alleged Debt after all reasonable efforts of negotiation and persuasion with respect to resolving the Alleged Debt had failed.
44. As demonstrated by the pattern, frequency and circumstances surrounding Pioneer's collection efforts directed at Debtor, Pioneer has violated Fla. Stat. § 559.72(7) by willfully

communicating with Plaintiff with such frequency as can reasonably be expected to harass Debtor in an attempt to collect the alleged Debt.

45. As demonstrated by the pattern, frequency and circumstances surrounding Pioneer's collection efforts directed at Debtor, Pioneer has violated Fla. Stat. § 559.72(7) by willfully engaging in conduct which can reasonably be expected to abuse or harass Debtor.

46. As a direct and proximate result of Pioneer's violations of Fla. Stat. § 559.72(7), Debtor has suffered stress, anxiety and frustration.

47. In light of Pioneer's violation of Fla. Stat. § 559.72(7), Plaintiff is entitled to actual damages, statutory damages, attorney's fees and costs pursuant to Fla. Stat. § 559.77.

48. As the continuous and consistent nature of Pioneer's violation of Fla. Stat. § 559.72(7) evidences Pioneer's intentional misconduct or gross negligence, Plaintiff is entitled to an award of punitive damages pursuant to Fla. Stat. § 768.72. *See, Goodin v. Bank of Am., N.A.*, 114 F. Supp. 3d 1197, 1214 (M.D. Fla. 2015).

**COUNT V – DIRECT VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii) BY NAVIENT**

49. Plaintiff re-asserts and re-alleges paragraphs 1 through 24 as if fully restated herein.

50. Navient is subject to, and has violated the provisions of, 47 U.S.C. § 227(b)(1)(A)(iii) by placing non-emergency telephone calls to Debtor's cellular telephone in the manner described above without Debtor's prior express consent.

51. Navient's violations of 47 U.S.C. § 227(b)(1)(A)(iii) were knowing or willful, in that at all times material hereto Navient knew it was calling Debtor's cellular telephone for non-emergency purposes in the manner described above without Debtor's prior express consent.

52. As a direct and proximate result of Navient's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Debtor has suffered the periodic loss of her cellular telephone service, stress, anxiety and frustration.

53. In light of Navient's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff is entitled to statutory or actual damages pursuant to 47 U.S.C. § 227(b)(3).

**COUNT VI – VICARIOUS LIABILITY OF NAVIENT**
**FOR PIONEER'S VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)**[1]

54. Plaintiff re-asserts and re-alleges paragraphs 1 through 24 as if fully restated herein.

55. Pioneer is subject to, and has violated the provisions of, 47 U.S.C. § 227(b)(1)(A)(iii) by placing non-emergency telephone calls to Debtor's cellular telephone through the use an artificial or prerecorded voice and/or through the use of telephone equipment that falls within the purview of, and is subject to, the TCPA without Debtor's prior express consent.

56. Pioneer's violations of 47 U.S.C. § 227(b)(1)(A)(iii) were knowing or willful, in that at all times material hereto Pioneer knew it was calling Debtor's cellular telephone for non-emergency purposes through the use of an artificial or prerecorded voice and/or telephone equipment that falls within the purview of, and is subject to, the TCPA without Debtor's prior express consent.

57. As a direct and proximate result of Pioneer's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Debtor has suffered the periodic loss of her cellular telephone service, stress, anxiety and frustration.

58. In light of the relationship between Navient and Pioneer detailed above, Navient is vicariously liable for Pioneer's violations of 47 U.S.C. § 227(b)(1)(A)(iii).

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[1] "Plaintiffs should separate their vicarious-based and direct-based claims […] into separate counts." *Young v. Borders*, 5:13-CV-113-OC-22PRL, 2013 WL 12180597, at *4 (M.D. Fla. May 14, 2013).

59. Plaintiff is entitled to statutory or actual damages pursuant to 47 U.S.C. § 227(b)(3).

**COUNT VII – DIRECT VIOLATION**
**OF SECTION 559.72(7), FLORIDA STATUTES BY NAVIENT**

60. Plaintiff re-asserts and re-alleges paragraphs 1 through 24 as if fully restated herein.

61. As demonstrated by the pattern, frequency and circumstances surrounding Navient's collection efforts directed at Debtor, Navient has violated Fla. Stat. § 559.72(7) by willfully communicating with Debtor with such frequency as can reasonably be expected to harass Debtor.

62. As demonstrated by the pattern, frequency and circumstances surrounding Navient's collection efforts directed at Debtor, Navient has violated Fla. Stat. § 559.72(7) by willfully engaging in conduct which can reasonably be expected to abuse or harass Debtor.

63. As a direct and proximate result of Navient's violations of Fla. Stat. § 559.72(7), Debtor has suffered stress, anxiety and frustration.

64. In light of Navient's violation of Fla. Stat. § 559.72(7), Plaintiff is entitled to actual damages, statutory damages, attorney's fees and costs pursuant to Fla. Stat. § 559.77.

65. As the continuous and consistent nature of Navient's violation of Fla. Stat. § 559.72(7) evidences Navient's intentional misconduct or gross negligence, Plaintiff is entitled to an award of punitive damages pursuant to Fla. Stat. § 768.72. *See, Goodin v. Bank of Am., N.A.*, 114 F. Supp. 3d 1197, 1214 (M.D. Fla. 2015).

**COUNT VIII – VICARIOUS LIABILITY OF NAVIENT**
**FOR PIONEER'S VIOLATION OF SECTION 559.72(7), FLORIDA STATUTES**

66. Plaintiff re-asserts and re-alleges paragraphs 1 through 24 as if fully restated herein.

67. Pioneer repeatedly and consistently placed multiple telephone calls to Debtor over an extended period of time in an attempt to collect the Alleged Debt after all reasonable efforts of negotiation and persuasion with respect to resolving the Alleged Debt had failed.

68. As demonstrated by the pattern, frequency and circumstances surrounding Pioneer's collection efforts directed at Debtor, Pioneer has violated Fla. Stat. § 559.72(7) by willfully communicating with Plaintiff with such frequency as can reasonably be expected to harass Debtor in an attempt to collect the alleged Debt.

69. As demonstrated by the pattern, frequency and circumstances surrounding Pioneer's collection efforts directed at Debtor, Pioneer has violated Fla. Stat. § 559.72(7) by willfully engaging in conduct which can reasonably be expected to abuse or harass Debtor.

70. As a direct and proximate result of Pioneer's violations of Fla. Stat. § 559.72(7), Debtor has suffered stress, anxiety and frustration.

71. In light of the relationship between Navient and Pioneer detailed above, Navient is vicariously liable for Pioneer's violations of Fla. Stat. § 559.72(7).

72. Plaintiff is entitled to actual damages, statutory damages, attorney's fees and costs pursuant to Fla. Stat. § 559.77.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff respectfully requests judgment:

a. Against Defendants and in favor of Plaintiff, awarding actual monetary loss from violations of the TCPA, or $500 in damages for each such violation, whichever is greater, pursuant to 47 U.S.C. § 227(b)(3)(B);

b. Against Defendants and in favor of Plaintiff, awarding treble damages for willful or knowing violations of the TCPA pursuant to 47 U.S.C. § 227(b)(3);

c. Against Pioneer and in favor of Plaintiff, awarding maximum statutory damages for violations of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2);

d. Against Pioneer and in favor of Plaintiff, awarding actual damages sustained as a result of violations of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(1);

e. Against Pioneer and in favor of Plaintiff, awarding reasonable attorney's fees and court costs pursuant to 15 U.S.C. § 1692k(a)(3);

f. Against Defendants and in favor of Plaintiff, awarding maximum statutory damages for violations of the FCCPA pursuant to Fla. Stat. § 559.77(2);

g. Against Defendants and in favor of Plaintiff, awarding actual damages sustained as a result of FCCPA violations pursuant to Fla. Stat. § 559.77(2);

h. Against Defendants and in favor of Plaintiff, awarding reasonable attorney's fees and court costs pursuant to Fla. Stat. § 559.77(2);

i. Against Defendants and in favor of Plaintiff, awarding punitive damages for FCCPA violations pursuant to Fla. Stat. § 768.72; and

j. Awarding any and all other relief the Court may deem just and proper.

Dated: March 15, 2017

Respectfully submitted:

/s/ *Benjamin W. Raslavich*
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